Supreme Court, U.S.
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No. 00-1311

In The

Supreme Court of the United States

THE BOARD OF THE COUNTY COMMISSIONERS OF BRYAN COUNTY, OKLAHOMA,

Petitioner,

v.

JILL BROWN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit's determination that Jill Brown produced legally sufficient evidence of inadequate municipal training is in conflict with this Court's § 1983 precedent, despite the Fifth Circuit's fact-intensive application of the precise legal standards set out in *Canton v. Harris* (and reconfirmed in *Bryan County v. Brown*) for adjudicating inadequate training claims?

2. Whether a County whose official policymaker authorizes a rookie officer to make forcible arrests prior to his receiving any training regarding when and how to apply force to a citizen should nevertheless escape liability under § 1983 for that officer's highly predictable violation of a citizen's right to be free from excessive force?

3. Whether the distinction drawn by this Court in *Bryan County v. Brown* between a municipal hiring decision and a municipal training decision, based as it is on the special difficulties of establishing the requisite causal nexus between a municipal *hiring* decision and a subsequent employee-perpetrated constitutional deprivation, permits an injured citizen to prevail on a theory of inadequate training despite her inability to prevail on a theory of inadequate hiring?

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STATEMENT OF THE CASE

The Fifth Circuit's holding that Bryan County's official law enforcement policymaker acted with "deliberate indifference," by authorizing a rookie officer to make forcible arrests before that officer had received any training regarding when and how to apply force to a citizen, rests on a straightforward application of this Court's precedent to an egregious set of facts. The Fifth Circuit's fact-intensive resolution of this case cannot fairly be characterized as "in conflict with" this Court's precedent, because it rests on a careful application of the standards enunciated in *Canton v. Harris*, 489 U.S. 378 (1989), and reconfirmed in *Bryan County v. Brown*, 520 U.S. 397 (1997), for adjudicating a § 1983 claim of inadequate municipal training. Nor has Petitioner even attempted to argue a circuit split; there simply isn't one. No circuit has held that a municipal policymaker is free to deliberately authorize rookie officers to make forcible arrests before receiving *any* training, much less adequate training, regarding when and how to apply force to a citizen.

With respect to inadequate *training* claims, this Court in *Bryan County* confirmed that which Jill Brown has consistently maintained is evident from *Canton*: that municipal liability may be based on a policymaker's deliberately indifferent failure to train a single officer to adequately handle those recurring constitutional obligations – such as avoiding excessive force – that inhere in a police officer's job. 520 U.S. at 409-410. Thus, the Fifth Circuit's holding does not conflict with this Court's precedent; rather, it is Petitioner's view of the case that conflicts with this Court's pronouncements, in both *Canton* and *Bryan County*, governing municipal liability for inadequate training.

Not only does Petitioner fail to identify any material conflict between the Fifth Circuit's ruling and the precedent of this Court, or that of any other court, but the case as it currently stands involves neither a novel legal issue nor any novel application of the law that threatens

municipalities with undeserved liability. The only novelty to this case was the *hiring* claim, which depended on borrowing *Canton*'s settled analysis of training claims and applying it in a hiring context. This Court explained in *Bryan County* that it was not that simple, emphasizing the differences between hiring claims and training claims. 520 U.S. at 409-410. With this Court's resolution of the *hiring* issue, the present case currently stands devoid of anything novel. All that remains is a straightforward application of those principles in *Canton* that govern training claims, principles that this Court in *Bryan County* expressly reconfirmed as applicable to training claims.

What the Fifth Circuit's holding means for counties and other municipal subdivisions is this, and only this: *Don't authorize rookie officers to make forcible arrests before they have had any force-related training*. Even the barest effort to provide force-related training to rookie officers will distinguish future cases from the present one. And counties remain entirely free to provide *no* force-related training to a rookie officer so long as they withhold from that officer the authority to make forcible arrests until such training is provided by others, like a police academy. Due to the unusual and egregious facts in the present case, and the Fifth Circuit's fact-intensive resolution of the training issues herein, this case will surely be aggressively cited by municipal subdivisions seeking to avoid liability by claiming, "We did more than Bryan County; we did something; we made an effort." And by setting the bar this high, the Fifth Circuit has ensured that future Fifth Circuit panels will virtually always have factual grounds to distinguish its *Bryan County* holding.

(a) Statement of Facts

Throughout its Petition, Bryan County repeatedly ignores the standard of review of a jury verdict *adverse* to the County, going so far as to describe certain evidence as "undisputed" despite conflicting testimony that the jury

was entitled to believe. Moreover, Bryan County conveniently omits mention of the wealth of evidence showing that it acted with deliberate indifference when its official policymaker on matters of hiring and training police officers, Sheriff B.J. Moore,[1] decided to authorize his nephew, Stacy Burns, to make forcible arrests despite wholly inadequate force-related training.

Stacy Burns testified that, prior to beginning work as a reserve officer, he had no experience as a law enforcement officer. Tr. 602. While all rookie cops require training to handle those recurring situations that commonly confront police officers – such as whether to use force on a citizen and how to apply that force to avoid unnecessary injury – a municipality's knowledge about the background and character of any particular rookie is obviously relevant to that officer's training needs. At the time Bryan County hired him to be a law enforcement officer,[2] the youthful Burns had already accumulated a lengthy criminal record of arrests and convictions: Assault, Resisting Arrest, Public Drunkenness, Driving While Intoxicated, False Identification, Driving While

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[1] Pretrial, the County stipulated that "[a]t all times relevant hereto, Defendant [Sheriff] Moore was the policymaker for Bryan County regarding the Sheriff's Department." R. Vol. 3, p. 854. The County made no objection to the portion of the jury charges that stated, "Sheriff B.J. Moore is an official whose acts constitute final, official policy of Bryan County, Oklahoma." Tr. 800. The County never raised the issue in its first appeal to the Fifth Circuit, and the Fifth Circuit noted that it had been waived. *Brown v. Bryan County*, 67 F.3d at 1182 n.17.

[2] Although the "bad hiring" claim is no longer at issue, the information that the County acquired about Burns before employing him is relevant not only to whether the County should have hired him (which is no longer at issue) but additionally relevant to whether the County adequately *trained* him to make force-related decisions in encounters with citizens (which *is* at issue).

License Suspended (three counts), and nine moving traffic violations. Tr. 317-320, 572-576. Sheriff Moore was aware of Burns' lengthy criminal history. Tr. 323-324, 648, 672-673. Although Moore claimed never to have read Burns' rap sheet carefully, Tr. 673, he excused his inattention to Burns' record with the explanation: "He had a long record." Tr. 673.[3] Despite Sheriff Moore's awareness that Burns had a long criminal record, despite the absence of a background investigation which would have shed additional light on Burns' character,[4] and despite Moore's knowledge that Burns was a "rookie" officer, Moore made the conscious decision, pursuant to his status as the decisionmaker for Bryan County, to authorize Burns to make arrests, including forcible arrests, Tr. 604, prior to Burns receiving virtually any training of any kind, much less adequate training regarding when and how to apply force to a citizen.

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[3] Of course, as the Fifth Circuit noted the first time it reviewed this case, it is possible that the jury did not believe Sheriff Moore when he professed ignorance of some of the more serious details of his nephew's record. 67 F.3d at 1184. Indeed, Moore also testified that he did not consider a history of misdemeanor arrests and convictions to be a "criminal record," Tr. 674, explaining that he did not believe that "assault and battery would stop anybody from being a good police officer. . . . " Tr. 648. Moore's twisted beliefs arguably explain, but certainly do not justify, his decision to authorize Burns to make forcible arrests prior to Burns receiving any meaningful training regarding either when or how to make a forcible arrest.

[4] Sheriff Moore admittedly made no further inquiry into the disposition of any of the charges or convictions, and made no attempt to determine whether Burns was currently on probation. Tr. 673-675. If he had, he would have discovered that there was an outstanding warrant for Burns' arrest for violating conditions of probation. Tr. 318-320, 620-622. Burns not only failed to pay fines and failed to perform community service, he also violated his probation by continuing to commit crimes including assault, public drunkenness, driving while license suspended, and false identification. Tr. 319-320.

Despite Burns' lack of experience, and his checkered recent past, Bryan County Sheriff's Department provided no formal departmental training to Burns. Tr. 600-605. Indeed, the County had no formal training program at all. Tr. 325, 327-331, 358, 600-602, 675-676. Although Burns stated in his deposition that he had received no training at all through Bryan County, formal or otherwise, he remembered at trial that he had viewed one or more television programs broadcast on a state law enforcement training channel, Tr. 579, 601, and that he had ridden with his grandfather, Reserve Deputy Calclazier, "several" times in civilian clothes prior to being hired. Tr. 579. Burns recalled no other aspects of his informal training by Bryan County officers, and made no effort to claim that anyone at Bryan County explained to him *how* to put a citizen on the ground without causing unnecessary injury, much less *when* it was appropriate to do so. *See* Tr. 600-605.

Bryan County's reliance on the training Burns allegedly received at Oklahoma's law enforcement training academy (known as CLEET) is wholly disingenuous. Although that may be a fine program for those rookie officers who actually attend and complete the course, Burns did not even apply for classes until May 6, 1991, a scant 6 days prior to his use of excessive force against Jill Brown. Tr. 516-517. Because the classes were held only three days a week, Tr. 578, Burns had at most three sessions of CLEET training prior to injuring Jill Brown. But the jury also could have found that Burns had not attended *any* CLEET classes prior to his attack on Jill Brown. After claiming in his deposition that he had received several months of CLEET training prior to May 12, 1991 (the Jill Brown incident), Burns suffered a memory loss at trial (regarding the number of CLEET classes he had attended) after plaintiff established that he had not even applied for CLEET training until May 6, 1991. Tr. 516, 577, 600, 608. Moreover, the jury was familiar with Burns' criminal record, which revealed a disregard both for the law and for truthfulness (the false identification);

and he also admitted lying under oath during his deposition. Tr. 576-577. Other evidence also shows that Burns attended *no* CLEET classes prior to his use of excessive force against Jill Brown. One form that had to be completed before Burns could be accepted into the CLEET program was dated May 30, 1991, eighteen days after he injured Jill Brown. Tr. 402-404. Burns' Employment Status Sheet, which must be filed with CLEET within ten days of hire, is dated June 12, 1991, thirty days after the Brown incident, and in excess of two months after he was hired. Tr. 400-402. Thus, it is simply not true, despite Petitioner's claim at page 5 of its Petition, that it was "undisputed" that Burns received force-related training at CLEET.

Burns' general lack of training was also reflected in the absence of any specific instruction regarding situations likely to arise while conducting a "state line" road block in an alleged "high crime" area. Tr. 649. To wit, Burns received no training regarding roadblock procedures, Tr. 602, 605, 679-680, no training regarding pursuit across state lines, Tr. 602, and no training regarding his authority to arrest in Texas. Tr. 603. Moreover, he received no supervision during the incident involving Jill Brown, Tr. 603-604, and no instructions during the pursuit. Tr. 609. Despite this absence of training, experience, and supervision, Sheriff Moore authorized Burns to make forcible arrests. Tr. 604. Burns apparently enjoyed this authority since, of his first thirteen arrests, he forced the arrestee to the ground at least *five* times, Tr. 628, a record of force that plaintiff's law enforcement expert characterized as "unusually high and excessive." Tr. 394. Despite Bryan County's knowledge that Burns was consistently taking citizens to the ground, the County produced no evidence that it responded to its knowledge of Burns' common practices with either training or supervision. In other words, the County's lax attitude toward the training and supervision of Burns continued.

Not surprisingly, the constitutional deprivation that Burns inflicted on Jill Brown is precisely the one – excessive force – that was highly predictable given Burns' background, his lack of experience, his lack of training and supervision (both generally as well as specifically in regard to those recurring force-related decisions that are inherent in the job of police officer), and his continued lack of training despite a demonstrated tendency to take citizens to the ground. Although the jury's finding that Burns subjected Jill Brown to excessive force is no longer in dispute, the details of the incident are still helpful in showing just how closely linked Burns' unconstitutional conduct is to Bryan County's failure to adequately train and supervise him. Jill Brown was a passenger in a pickup truck driven by her husband, Todd Brown. Shortly after crossing the Texas state line, Todd Brown saw a roadblock in Oklahoma, turned around and drove back into Texas, and was stopped by Bryan County officers shortly thereafter on a side road that led to his mother's house.[5] Jill Brown testified that, after the stop,

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[5] Mr. Brown testified that he was familiar with the checkpoint and chose not to go through it because he had been unnecessarily detained there on prior occasions for up to fifteen minutes. Tr. 134. The Browns previously had contacted Oklahoma officials about these roadblocks near the Texas border, complaining about unnecessary delays and being hassled by the deputies. Tr. 41-42, 134. Indeed, this Court has recently held that such general investigatory roadblocks are unconstitutional. *Indianapolis v. Edmond*, ___ U.S. ___, 121 S.Ct. 447, 458 (2000). Mr. Brown decided to turn around and spend the night at his mother's home, which was a few miles back across the border in Texas. Tr. 134, 138. When turning around, his tires did not squeal and did not throw any gravel. Tr. 135. He neither turned around, nor came out of the turn, nor drove back toward Texas, at a high rate of speed. Tr. 136-137. After crossing the dam into Texas, he turned off the main road, taking his normal route to his mother's house. Tr. 138-139. After he realized the police were following him, he pulled off the road at the first available safe opportunity. Tr. 142-43. The Browns were

she heard two commands to get out of the vehicle, was doing exactly what Burns told her to do, and was not slow to respond. Tr. 53-54, 94. After starting to exit the vehicle with her hands in the air, Burns grabbed her by the left arm, spun her around, and "threw" her to the ground. Tr. 52-53. Although the County continues to characterize an "arm bar" technique as the "lowest level of force" available, Petition, at 5, that description assumes a *properly executed* arm-bar takedown, not spinning someone around and throwing them hard to the pavement. Tr. 392, 541. Moreover, there was no need to use *any* degree of force on Jill Brown. Tr. 347-348. Ms. Brown was not able to break her fall as one hand was in the air and Burns had hold of the other. Tr. 53. She landed on the pavement, knees first, with Burns' knees in her back. Tr. 54-55.[6] The Fifth Circuit found sufficient evidence to support the jury's finding that Burns used excessive force. 67 F.3d at 1180.[7] As a result of Stacy Burns' actions, Jill Brown has had four operations, two on each knee, and

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not intoxicated, nor did they have any motive for avoiding the roadblock other than their desire to avoid harassment. Tr. 49, 159.

[6] When Jill Brown cried out upon being thrown to the pavement, Todd Brown attempted to check on his wife's condition and was repeatedly punched. While being beaten, Mr. Brown says he exclaimed, "This is just like L.A., huh, boys," to which Burns responded, "No, this is a hell of a lot worse." Tr. 150. Burns later returned to where Jill Brown lay on the pavement, arms handcuffed behind her back, and jerked her up by the chain between the cuffs. Tr. 57.

[7] The Fifth Circuit also found sufficient evidence to support the jury's finding of false arrest and false imprisonment. 67 F.3d at 1180-81. Jill Brown had committed no crime, yet, after being slammed to the pavement, she remained handcuffed there for approximately one hour, during which time she was never informed why she was being detained. *Id.* And no charges were ever brought against her. *Id.* at 1181.

will require additional surgery, eventually culminating in total knee replacements. Tr. 261, 267-272.

(b) Course of Proceedings

At trial, Jill Brown established the three elements necessary to demonstrate that Bryan County was sufficiently at fault for its employee's constitutional tort to justify the imposition of § 1983 *municipal* liability: 1) an official municipal decision by a policymaker (*i.e.*, a "policy") made with 2) deliberate indifference, which 3) directly caused the constitutional deprivation. First, Bryan County conceded that Sheriff Moore was the County's official policymaker with exclusive and final policymaking authority regarding the hiring and training of county law enforcement officers, including Officer Burns. R. Vol. 3, pp. 854, 862. Second, the jury's verdict expressly found that the County, through its policymaker on matters of hiring and training, was deliberately indifferent to Jill Brown's constitutional rights, both with respect to the improper hiring and inadequate training of Burns. Tr. 824. Third, the jury found that Jill Brown's injuries (from the excessive force) were directly caused by the deliberate indifference of Bryan County's official policymaker. Tr. 800, 824-825. The Fifth Circuit affirmed the jury's verdict of municipal liability, finding that the jury's verdict was supported by the evidence. *Brown v. Bryan County*, 67 F.3d 1174, 1185 (5th Cir. 1995).[8] Bryan County

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[8] In its Petition, Bryan County repeatedly cites a superceded Fifth Circuit panel opinion, 53 F.3d 1410 (5th Cir. 1995) (superceded by 67 F.3d 1174), as "*Brown I.*" Petition, at 10-11, 23, 29. Not only is this terribly misleading, but Petitioner apparently does not appreciate the meaning of "superceded." Indeed, in its "Table of Authorities," Petitioner does not even acknowledge that 53 F.3d 1410 is legally nonexistent. It is true that, in that superceded opinion, the panel during the first appellate incarnation of this case originally ruled that Jill Brown's hiring claim was a winner but that her training claim

filed a Petition for Writ of Certiorari, asking this Court to review the *hiring* aspects of the case. (Bryan County did not raise a challenge in its Petition for Writ of Certiorari to the inadequate *training* portion of Jill Brown's verdict, which the Fifth Circuit left undisturbed and undiscussed, stating early in its opinion, "[f]or efficiency's sake, we will address only those points that we believe merit review." 67 F.3d at 1178.) This Court granted review, and held that the County was not liable based on a theory of inadequate *hiring*. 520 U.S. 397 (1997). Throughout its opinion, however, this Court consistently distinguished hiring claims from training claims in a way that directly supports affirmance of the jury's verdict that Bryan County's deliberately indifferent failure to adequately *train* Burns directly resulted in the constitutional injury that Jill Brown suffered at the hands of Burns. *See id.*, at 409-410. Moreover, this Court in *Bryan County* expressly approved the theory of municipal liability for inadequate training that was reserved in *Canton*, the theory upon

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was a loser. That opinion was superceded by the opinion at 67 F.3d 1174, which *deleted* the portion of the original opinion that had branded the training claim a loser. Apparently, the Fifth Circuit appreciated what this Court later made clear with its own *Bryan County* opinion – that Jill Brown's training claim is actually far *stronger* than her hiring claim. That would explain why, in its *ultimate* opinion, the Fifth Circuit classified Petitioner's challenge to Jill Brown's *training* victory as not even meriting review. 67 F.3d at 1178. This Court expressly noted the Fifth Circuit's resolution of the training issue, and left it undisturbed. *See* 520 U.S. 397, 402 (1997). ("The [Fifth Circuit] addressed only those points that it thought merited review; it did not address the jury's determination of county liability based on inadequate training of Burns, [67 F.3d] at 1178, nor do we.") Thus, although Petitioner complains, at page 4 of its Petition, of the "tortuous procedural route" this case has taken, the only "tortuous" aspect of the route is how Jill Brown was effectively required to win affirmance of her favorable verdict on training a *second* time, when that part of her victory was arguably already the "law of the case."

which Jill Brown's training claim expressly stands. *Id.*, at 409.

On remand, not surprisingly, both the District Court and the Fifth Circuit accepted at face value this Court's distinction between hiring and training claims. R. Vol. 4, 1078-1079; 219 F.3d 450, 461 (5th Cir. 2000). Both the District Court and the Fifth Circuit also noted this Court's reaffirmance of those portions of *Canton* on which Jill Brown's training claim expressly rests. R. Vol. 4, 1078-1079; 219 F.3d at 460-461. Thus, the District Court reentered judgment for Jill Brown based on the favorable jury verdict she had received on her training claim, R. Vol. 4, 1093-1094; and the Fifth Circuit affirmed based on its fact-intensive application of *Canton*'s settled analysis of training claims. 219 F.3d at 462-465.

SUMMARY OF ARGUMENT

Although this Court in *Bryan County* found the absence of a sufficiently direct causal link between Jill Brown's constitutional injuries and the County's decision to *hire* Burns, nothing in the Court's opinion casts doubt on the propriety of the inadequate *training* portion of the jury's verdict in favor of Jill Brown. Indeed, this Court's analysis of the hiring issue rested heavily on a distinction between hiring and training claims that made it inappropriate to "import the reasoning of *Canton* into the hiring context." 520 U.S. at 410. Nevertheless, this Court expressly approved the continued vitality of the *Canton* reasoning in the *training* context, and further explained *Canton* (as it relates to training) in a way that directly supports the Fifth Circuit's affirmance of the jury's "inadequate training" verdict in favor of Jill Brown. *Id.*, at 409-410.

First, this Court's opinion in *Bryan County* expressly confirms that a claim of § 1983 municipal liability under *Canton* can be based on a County's deliberately indifferent failure to train a single officer, and can be established without showing a pattern of constitutional

violations. *Id.* According to the Court, deliberate indifference under *Canton* can be established by a failure to adequately train an officer to handle those recurring constitutional obligations that an officer is certain to face, such as those obligations relating to the use of police force against citizens – *e.g.*, whether to use force, how much force to use, and how to apply that force so as to avoid unnecessary injury. *See* 520 U.S. at 409-410. Because of the recurring nature of the obligation, the municipality is on notice of the need to train officers (especially a rookie officer) even *prior to* a pattern of officer uses of excessive force against citizens. *See id.*, at 409. The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights justifies a finding that the policymakers' decision not to train the officer constitutes deliberate indifference toward a particular constitutional right of citizens, namely, the right to be free from excessive force. *See id.* With respect to the causation issue, the Court added, "[t]he high degree of predictability [that the failure to adequately train will lead to a particular constitutional violation] may also support an inference of causation – that the municipality's indifference led directly to the very consequence that was so predictable." *Id.*, at 409-410.

Jill Brown's theory of inadequate municipal training precisely follows the *Canton* theory that was expressly approved in *Bryan County*. First, she produced legally sufficient evidence of the County's deliberate indifference to Burns' obvious need for force-related training. Burns was a rookie officer with no law enforcement experience, Tr. 602, and the decision whether and how to apply force to citizens is a recurring situation that all police officers must be adequately trained to handle. Moreover, the County's policymaker, Sheriff Moore, had special knowledge about Burns (his lengthy criminal record revealing, at best, an individual with a lax attitude toward the law) that also shed light on Burns' need for training. Tr. 323-324, 648, 672-673. Despite Burns' lack of experience

and questionable character, he received no formal departmental training of any kind from Bryan County. Tr. 600-605. Indeed, the County had no formal training program at all. Tr. 325, 327-331, 358, 600-602, 675-676. Nor did Burns receive anything amounting to adequate *in*formal departmental training from the County. Although Burns stated in his deposition that he had received no training at all from the County, formal or otherwise, he remembered at the trial that he had viewed one or more television programs broadcast on a state law enforcement channel, and that he had ridden with his grandfather, a reserve deputy, "several" times in civilian clothes prior to being hired. Tr. 579, 601. Even if that qualifies as some informal departmental training, a jury reasonably could have found that it was dramatically short of that necessary to address Burns' training needs.

Bryan County's reliance on the training Burns allegedly received at Oklahoma's state training program (known as CLEET) is wholly disingenuous. Burns did not even apply for classes until May 6, 1991, a scant 6 days prior to his use of excessive force against Jill Brown. Tr. 516-517. Because the classes were held only three days a week, Tr. 578, Burns had at most three sessions of CLEET training prior to injuring Jill Brown. Indeed, there was evidence introduced on which the jury could have found that Burns had not attended *any* CLEET classes prior to his attack on Jill Brown. After claiming in his deposition that he had received several months of CLEET training prior to May 12, 1991 (the Jill Brown incident), Burns suffered a memory loss at trial (regarding the number of CLEET classes he had attended) after plaintiff established that he had not even applied for CLEET training until May 6, 1991. Tr. 516, 577, 600, 608. Perhaps most importantly, certain forms that had to be filed with CLEET prior to his acceptance into the training academy were dated weeks after Burns' confrontation with Jill Brown. Tr. 400-404.

Despite Burns' lack of experience, training, and supervision, Sheriff Moore authorized Burns to make

forcible arrests. Tr. 604. Burns apparently relished his authority to make forcible arrests since, of his first thirteen arrests, he forced the arrestee to the ground at least *five* times, Tr. 628, a record of force that Plaintiff's law enforcement expert characterized as "unusually high and excessive." Tr. 394. Because Bryan County has a small force and because the policymaker (Sheriff Moore) was Burns' uncle, Tr. 605, it would have been reasonable for the jury to infer that Sheriff Moore was aware of Burns' propensity to take citizens to the ground. Despite this, the County produced no evidence of training or supervision in response to Burns' common practices. In other words, the County's failure to adequately train Burns *before* setting him loose on the public was matched by its *continuing* failure to train him despite knowledge that his encounters with citizens were regularly escalating into uses of force.

Not only was Burns untrained, he received no supervision during the incident involving Jill Brown, Tr. 603-604, and no instructions during the pursuit. Tr. 609. Jill Brown's description of Burns' use of force – *i.e.*, that she was grabbed by the arm, spun around, and thrown hard to the pavement, Tr. 52-55 – certainly belies the notion that Burns used any legitimate "technique" for taking a citizen to the ground. Nevertheless, even assuming Burns was attempting such a "technique," Plaintiff's law enforcement expert testified that Jill Brown's description of Burns' conduct did not reflect an appropriate execution of the arm-bar technique. Tr. 392, 541. Moreover, there was no need to use *any* force against Jill Brown. Tr. 347-348.

Finally, because the constitutional deprivation suffered by Jill Brown (excessive force) was precisely the one that was so highly predictable given Burns' lack of adequate training to handle the quintessential recurring obligation that officers regularly confront – the obligation to avoid using excessive force against citizens – there is a patently obvious and direct causal link between the County's deliberately indifferent failure to adequately

train Burns to make and implement force-related decisions and Burns' use of excessive force against Jill Brown just a few weeks after the County authorized him to make forcible arrests. As this Court recently emphasized, the high degree of predictability that a training inadequacy will lead to a particular constitutional violation supports an inference of causation – *i.e.*, that the municipality's deliberate indifference led directly to the consequence that was so predictable. 520 U.S. at 409-410.

In sum, given the facts of this case, this Court's opinion in *Bryan County* expressly supports the Fifth Circuit's affirmance of the jury's verdict finding the County liable to Jill Brown under the inadequate training analysis originally approved in *Canton*. Thus, the Fifth Circuit's holding conflicts with neither *Canton* nor *Bryan County*, nor any other holding of this Court. Further, given this Court's earlier resolution of the *hiring* claim, this case no longer contains either a novel or a controversial issue. The Fifth Circuit's holding is merely a fact-intensive application of settled "failure to train" law to a unique and egregious set of facts. The Fifth Circuit holding, at most, stands only for the proposition that municipal subdivisions may be held accountable under *Canton* for excessive uses of force by rookie officers who have been authorized by municipal policymakers to make forcible arrests before they have had any force-related training.

ARGUMENT

I. This Court's *Bryan County* Opinion Expressly Supports Affirming the Jury's Verdict Imposing Municipal Liability Based on the County's Deliberately Indifferent Failure to Adequately Train Officer Burns to Handle the Recurring Constitutional Obligation to Avoid Subjecting Citizens to Excessive Force, the Very Obligation that Burns Breached When He Threw Jill Brown to the Pavement.

This Court's earlier ruling in this case knocked out only one of two alternative bases for the jury's verdict imposing municipal liability on Bryan County under

§ 1983. The jury's verdict against Bryan County, Oklahoma, was based on two separate and independent findings of deliberate indifference by Sheriff Moore, Bryan County's official policymaker on matters of hiring and training law enforcement officers. The jury found not only that Sheriff Moore was deliberately indifferent when *hiring* Stacy Burns, but also that Sheriff Moore was deliberately indifferent by not adequately *training* Stacy Burns before setting him loose on the public authorized to make forcible arrests. R. Vol. 10, pp. 823-825. Following the Fifth Circuit's first affirmance, 67 F.3d 1174 (1995), Bryan County requested certiorari only as to the hiring portion of the verdict, and this Court's decision in Bryan County's favor consequently resolved only the hiring issue. 520 U.S. 397, 402 (1997) ("The [Fifth Circuit] addressed only those points that it thought merited review; it did not address the jury's determination of county liability based on inadequate training of Burns, [67 F.3d] at 1178, nor do we."). Not only did this Court's ruling expressly leave the training pillar of Jill Brown's judgment intact, but the Court elsewhere in its opinion drew a distinction between claims based on faulty municipal hiring and those based on faulty municipal training, emphasizing that training claims will continue to be governed by the analysis in *Canton v. Harris*, 489 U.S. 378 (1989), and further explaining *Canton* in a way that directly supports the Fifth Circuit's decision, following remand from this Court, to uphold the jury's "inadequate training" verdict in favor of Jill Brown. *See* 520 U.S. at 409-410.

A. This Court's earlier opinion in this case drew a sharp distinction between claims of § 1983 municipal liability based on hiring and those based on training.

Central to this Court's reversal of Jill Brown's verdict on inadequate municipal hiring was its rejection of plaintiff's analogy between failure-to-train cases and inadequate pre-hire-screening cases. *See* 520 U.S. at 409-410.

The Court's distinction between hiring and training flows from its concern about whether there is a sufficiently direct line of causation between an inadequate municipal hiring decision and the hired employee's subsequent deprivation of a citizen's constitutional rights. *See id.*, at 410. ("Every injury suffered at the hands of a municipal employee can be traced to a hiring decision in a 'but-for' sense." Thus, "there is a particular danger [with inadequate hiring claims] that a municipality will be held liable for an injury not directly caused by a deliberate action attributable to the municipality itself."). The Court's reasoning reveals that it considers poor municipal *hiring* decisions to be more remote from subsequent employee-perpetrated constitutional wrongs than poor municipal *training* decisions. *See id.* ("predicting the consequence of a single hiring decision, even one based on an inadequate assessment of a record, is far more difficult than predicting what might flow from the failure to train a single law enforcement officer as to a special skill necessary to the discharge of his duties"). Of course, the "flip side" of that coin is that the line of causation between inadequate municipal *training* and a poorly trained employee's predictable constitutional violations will always be more direct than the line of causation between inadequate municipal *hiring* decisions and the poorly hired employee's subsequent constitutional torts. *See id.* (describing the risk from a particular glaring training omission as "'obvious' in the abstract.") In short, there is nothing in this Court's earlier opinion in this case that calls into question *Canton*'s continued vitality in inadequate training cases; nor is there anything in the Court's opinion that casts serious doubt on either the District Court's decision, or the Fifth Circuit's decision, on remand from this Court, to uphold the jury's "inadequate training" verdict in favor of Jill Brown.

B. This Court's opinion in *Bryan County* clearly confirmed that a claim of § 1983 municipal liability under *Canton* can be based on the inadequate training of a single officer, and can be established without pointing to a pattern of constitutional violations.

Both in its first Fifth Circuit appeal and in this Court, Bryan County relied heavily on a "single officer/single incident" theory – *i.e.*, that a municipality cannot be held liable under § 1983 in the absence of proof of a pattern of constitutional deprivations. Bryan County repeatedly urged both that Burns was the only officer proven to have been improperly hired/inadequately trained and that Jill Brown was the only citizen proven to have been deprived of her constitutional rights by Burns. This Court expressly did not rule in Bryan County's favor on this point. 520 U.S. at 412. We do acknowledge, however, that the Court's language was somewhat skeptical about claims of municipal liability based on a single *hiring* decision. *See id.* ("Even assuming without deciding that proof of a single instance of inadequate screening could ever trigger municipal liability . . . . "). Nevertheless, such skepticism toward § 1983 claims based upon a single *hiring* decision is in marked contrast to the Court's attitude toward § 1983 claims based on inadequate municipal *training*. *See id.* at 410 ("predicting the consequences of a single hiring decision . . . is far more difficult than predicting what might flow from the failure to train a single law enforcement officer as to a special skill necessary to the discharge of his duties"). Indeed, with respect to inadequate *training* claims, this Court clearly confirmed that which Jill Brown has consistently maintained is evident from *Canton*: that municipal liability may be based on a policymaker's deliberately indifferent failure to train a single officer, even where that deliberate indifference results only in a single incident involving constitutional violations rather than a pattern of such violations. *Id.*, at 409-410.

Once again, it is apparent that this Court is treating hiring claims differently than training claims, the latter of which continue to be governed by *Canton*. Ironically, it is the Supreme Court's rejection of Plaintiff's attempt to apply *Canton* to hiring claims that clearly shows the way on the training issue:

> *In Canton, we did not foreclose the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability.* 489 U.S., at 390, and n. 10 ("[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious . . . that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need"). Respondent purports to rely on *Canton*, arguing that Burns' use of excessive force was the plainly obvious consequence of Sheriff Moore's failure to screen Burns' record. In essence, respondent claims that this showing of "obviousness" would demonstrate both that Sheriff Moore acted with conscious disregard for the consequences of his action and that the Sheriff's action directly caused her injuries, and would thus substitute for the pattern of injuries ordinarily necessary to establish municipal culpability and causation.
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> *The proffered analogy between failure-to-train cases and inadequate screening cases is not persuasive. In leaving open in Canton the possibility that a plaintiff might succeed in carrying a failure-to-train claim* ***without showing a pattern of constitutional violations,*** we simply hypothesized that, in a narrow range of circumstances, *a violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations. The likelihood that the situation will recur and the predictability that* ***an officer*** *lacking specific tools to*

> *handle that situation will violate citizens' rights could justify a finding that policymakers'* ***decision not to train the officer*** *reflected "deliberate indifference" to the obvious consequence of the policymakers' choice – namely, a violation of a specific constitutional or statutory right. The high degree of predictability may also support an inference of causation – that the municipality's indifference led directly to the very consequence that was so predictable.*

Where a plaintiff presents a § 1983 claim premised upon the inadequacy of an official's review of a prospective applicant's record, however, there is a particular danger that a municipality will be held liable for an injury not directly caused by a deliberate action attributable to the municipality itself. Every injury suffered at the hands of a municipal employee can be traced to a hiring decision in a "but-for" sense: But for the municipality's decision to hire the employee, the plaintiff would not have suffered the injury. To prevent municipal liability for a hiring decision from collapsing into *respondeat superior* liability, a court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged.

> *In attempting to import the reasoning of Canton into the hiring context, respondent ignores the fact that predicting the consequence of a single hiring decision, even one based on an inadequate assessment of a record, is far more difficult than predicting what might flow from* ***the failure to train a single law enforcement officer as to a specific skill necessary to the discharge of his duties.***

520 U.S. at 409-410 (emphasis added).

In light of this Court's earlier opinion in this case, it is apparent that Bryan County can no longer rely on the "single officer/single incident" approach that has been the primary thrust of its attacks on the jury verdict to this point. Although Bryan County somewhat backed away from its "every municipality gets one bite" argument in

the Fifth Circuit, Brief for Appellant, at 12, 17, it nevertheless demonstrates its reluctance to entirely let it go, despite the clear ramifications of this Court's opinion. *See* Petition, at 4, 17, 18, 19, 24. Not only did this Court refuse to adopt a *per se* "one bad hiring decision is not enough" view of municipal *hiring* liability under § 1983, it also cited with approval that portion of *Canton* that expressly permits municipal liability for the improper *training* of even a single officer. 520 U.S. at 409. Thus, under *Canton*, and under *Bryan County*, municipal liability can be founded upon the failure to adequately train a single officer for those recurring constitutional obligations that an officer is certain to face, such as those obligations relating to the use of police force against citizens – *i.e.*, whether to use force, how much force to use, and how to apply that force. *See Canton*, 489 U.S. at 390 & n.10; *Bryan County*, 520 U.S. at 409-410. And, when the training inadequacy relates to such a recurring constitutional obligation, both *Canton* and *Bryan County* emphasize that municipal liability does not depend on a plaintiff's ability to prove a pattern of prior similar constitutional deprivations suffered by others. *Bryan County*, 520 U.S. at 409, *citing Canton*, 489 U.S. at 390 & n.10.

For a municipality to be "deliberately indifferent" under *Canton*, it must have notice that the failure to adequately train an officer creates an obvious danger that the officer will violate a particular constitutional right. *Bryan County*, 520 U.S. at 409. (For example, Bryan County's wholesale failure to provide any "force-related" training before setting Officer Burns loose on the public authorized to make forcible arrests – and the County's continuing failure to provide Burns any "force-related" training despite knowledge that Burns was repeatedly taking citizens to the ground – created an obvious danger that Burns would violate a citizen's constitutional right, under the Fourth Amendment, to be free from an unreasonable seizure made with excessive force.) Although some form of "notice" that a failure to train poses an obvious danger of a particular constitutional deprivation

is indispensable to a finding of "deliberate indifference," *Canton* makes clear that notice of a need to train *does not always have to come from a pattern of constitutional deprivations*. *See* 489 U.S. at 390 & n.10; *see also* 489 U.S. at 396-397 (O'Connor, J., concurring). The notice *may* come from such a pattern of similar constitutional deprivations but, as *Canton* recognizes, the notice may also come from the municipality's own inherent awareness that certain of its employees, given the very nature of their employment, will face certain recurring constitutional obligations that clearly put the municipality on notice of a training need. *Id.* And *Canton*'s classic example of such "notice" precisely fits Jill Brown's case – the *obvious* need, apparent long before any pattern of excessive force emerges, to train police officers in the use of force. 489 U.S. at 390 n.10; *see also* 489 U.S. at 396-397 (O'Connor, J., concurring). The Court in *Bryan County* not only acknowledged but reaffirmed this aspect of *Canton*. 520 U.S. at 409-410.

Another recent Fifth Circuit case, *Snyder v. Trepagnier*, 142 F.3d 791 (5th Cir. 1998), clearly demonstrates that the Fifth Circuit has a grasp of when municipal liability requires proof of a pattern of constitutional deprivations and when it does not. In *Snyder*, the plaintiff's failure to train theory was premised on an alleged obvious need to train officers in stress management techniques. *Id.* at 798. Under *Canton*, however, the need for more or different training must be so obvious that a failure to train can fairly be characterized as deliberate indifference to the need. 489 U.S. at 390. In other words, a municipality must be on sufficient notice of the training need so that a failure to respond to that need amounts to deliberate indifference. Viewed in light of *Canton*, the failure to train theory in *Snyder* and the failure to train theory in the present case are at opposite ends of the deliberate indifference spectrum. The need to train officers in the use of force versus the need to train officers in stress management techniques. The two theories are not even remotely analogous. The training need in the present case is inherently obvious (as recognized by *Canton*, at 390 & n.10)

while the training need in *Snyder* plainly is not. Thus, under *Canton*, the failure to train an officer in the use of force can constitute deliberate indifference to an obvious need even absent a showing of prior uses of excessive force by similarly untrained officers. On the other hand, the failure to train an officer in stress management techniques would be deliberately indifferent to an obvious need only in the event that a pattern of over-stressed officer behaviors indicated such a need. *See Canton*, 489 U.S. at 396-397 (O'Connor, J., concurring) (contrasting the failure to train officers in the use of force with the failure to train officers in diagnosing the symptoms of emotional illness). In short, while the facts of the present case precisely fit *Canton*'s classic example of when a municipality can be proven deliberately indifferent without pointing to a pattern of similar incidents, *Snyder* is a classic example of a case where the plaintiff should prove up a pattern of stress-related officer behaviors in order to demonstrate that the municipality was on notice of the particular need for stress management training. Consequently, the Fifth Circuit correctly identified the inadequate training theory in *Snyder* as legally deficient absent substantial proof of such a pattern. 142 F.3d at 798-799. Thus, *Snyder* shows that the Fifth Circuit appreciates the obvious contrast between cases like *Snyder* that do, and cases like the present one that do not, require proof of a pattern of constitutional violations in order to establish "deliberate indifference" under *Canton*.

C. The evidence produced at trial was legally sufficient to establish Bryan County's deliberate indifference to Burns' obvious need for force-related training.

Although Burns' record standing alone may not have been sufficiently predictive of a particular constitutional violation to establish municipal liability based on a theory of faulty *hiring*, this Court never suggested that Moore's knowledge of Burns' lengthy record was irrelevant to the policymaker's awareness of a substantial need

to *train*. Indeed, Burns' record – which not only involved violence but showed him to be an incorrigible scofflaw[9] – surely suggested to the policymaker that Burns was a rookie officer sorely in need of training and supervision in order to adequately prepare Burns not only to recognize but to respect the lines between constitutional and unconstitutional uses of force. And, although the Sheriff's decision to *hire* Burns despite his record may not have been highly predictive of a subsequent use by Burns of excessive force against a citizen, this Court's opinion supports a contrary conclusion regarding the Sheriff's later decision – again in spite of knowledge of Burns' criminal record – to put Burns on the street authorized to make forcible arrests prior to receiving any meaningful training of any kind, much less training regarding when and how to apply force to a citizen. *See* 520 U.S. at 410 ("predicting the consequence of a single hiring decision . . . is far more difficult than predicting what might flow from the failure to train a single law enforcement officer as to a specific skill necessary to the discharge of his duties").

Finally, although Burns' criminal record and Sheriff Moore's response thereto may have been the only evidence of faulty municipal *hiring*, there was far more

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[9] Assault, Resisting Arrest, Public Drunkenness, Driving While Intoxicated, False Identification, several counts of Driving While License Suspended, and nine moving traffic violations. Tr. 317-320, 572-576. Just as significant as the nature of his record is the freshness of that record – virtually all those breaches of the law occurred in the two years immediately preceding Sheriff Moore's decision to put him on the streets authorized to make forcible arrests despite his utter lack of either training or supervision. Moreover, the Fifth Circuit, during its initial review of this case, emphasized that the jury could have believed that Sheriff Moore was lying when he claimed ignorance of the details of Burns' record. 67 F.3d at 1184. And this Court also found such a jury finding "plausible." 520 U.S. at 414.

evidence of faulty *training* than simply Burns' record and its attendant red flag that Burns was a person who, if hired, needed substantial training and supervision prior to being authorized to have significant physical contact with the public. Specifically, the following additional evidence of inadequate training was produced at trial:

1) *Burns' lack of law enforcement experience* – Stacy Burns testified that, prior to beginning work as a reserve officer, he had no experience as a law enforcement officer. Tr. 602.

2) *Burns' lack of formal departmental training of any kind from Bryan County* – Despite Burns' lack of experience, and his criminal history, Bryan County Sheriff's Department provided no formal departmental training to Burns. Tr. 600-605.

3) *Bryan County's lack of formal departmental training of any kind* – The County had no formal training program at all. Tr. 325, 327-331, 358, 600-602, 675-676.

4) *Burns' lack of informal departmental training from Bryan County* – Although Burns stated in his deposition that he had received no training at all through Bryan County, formal or otherwise, he remembered at trial that he had viewed one or more television programs broadcast on a state law enforcement training channel, Tr. 579, 601, and that he had ridden with his grandfather, Reserve Deputy Calclazier, "several" times in civilian clothes prior to being hired. Tr. 579. Even if that qualifies as some informal departmental training, a jury could have reasonably concluded that it was dramatically short of that necessary to address Burns' training needs, particularly since neither the television program nor his grandfather provided any specific training regarding when and how to apply force to a citizen.

5) *Little or no training at State Police Academy* – Bryan County's reliance on the training Burns allegedly received at Oklahoma's law enforcement training academy (known as CLEET) is wholly disingenuous. To put it bluntly, the County's "CLEET defense" blew up in its face at trial. Tr. 400-404, 516-517, 577-578, 600-608. Burns did

not even apply for classes until May 6, 1991, a scant 6 days prior to his use of excessive force against Jill Brown. Tr. 516-517. Because the classes were held only three days a week, Tr. 578, Burns had at most three sessions of CLEET training prior to injuring Jill Brown. Indeed, there was evidence introduced on which the jury could have based a finding that Burns had not attended *any* CLEET classes prior to his attack on Jill Brown. After claiming in his deposition that he had received several months of CLEET training prior to May 12, 1991 (the Jill Brown incident), Burns suffered a memory loss at trial (regarding the number of CLEET classes he had attended) after plaintiff established that he had not even applied for CLEET training until May 6, 1991. Tr. 516, 577, 600, 608. Moreover, the jury was familiar with Burns' record, which revealed a disregard both for the law and for truthfulness (the false identification); and he also admitted lying during his deposition. Tr. 576-577. Other evidence also shows that Burns attended *no* CLEET classes prior to his use of excessive force against Jill Brown.One form that had to be completed before Burns could be accepted into the CLEET program was dated May 30, 1991, eighteen days after he injured Jill Brown. Tr. 402-404. Burns' Employment Status Sheet, which must be filed with CLEET within ten days of hire, is dated June 12, 1991, thirty days after the Brown incident, and in excess of two months after he was hired. Tr. 400-402. Thus, it is simply not true, despite Petitioner's claim at page 5 of its Petition, that it was "undisputed" that Burns received force-related training at CLEET.[10]

6) *Policymaker authorization of Burns' use of force on citizens* – Despite Burns' lack of experience, training, and

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[10] Therefore, whatever federalism concerns are raised by holding state officials liable despite compliance with state law minimums for training that fail to adequately protect federal constitutional rights, that issue is simply not presented by the present case because of the substantial evidence of *non*compliance with state law detailed above.

supervision, Sheriff Moore authorized Burns to make forcible arrests. Tr. 604.

7) *Continued absence of training despite the fact that Burns repeatedly forced citizens to the ground at a rate that was "unusually high and excessive"* – Stacy Burns apparently enjoyed his authority to make forcible arrests since, of his first thirteen arrests, he forced the arrestee to the ground at least *five* times, Tr. 628, a record of force that Plaintiff's law enforcement expert characterized as "unusually high and excessive." Tr. 394. Because Bryan County has a small force and because the policymaker (Sheriff Moore) was Burns' uncle, Tr. 605, it would have been reasonable for the jury to infer that Sheriff Moore was aware of Burns' propensity to take citizens to the ground. Despite this, the County produced no evidence of training or supervision in response to Burns' common practices. In other words, the County's utter failure to adequately train Burns *before* setting him loose on the public was matched by its *continuing* failure to train him despite knowledge that his encounters with citizens were regularly escalating into uses of force.

8) *No specific training regarding how to conduct a roadblock or how to respond to situations that might arise* – Burns' general lack of training was also reflected in the absence of any specific instruction regarding situations likely to arise while conducting a "state line" road block in an alleged "high crime" area. Tr. 649. To wit, Burns received no training regarding roadblock procedures, Tr. 602, 605, 679-680, no training regarding pursuit across state lines, Tr. 602, and no training regarding his authority to arrest in Texas. Tr. 603.

9) *No supervision during the Jill Brown incident* – Burns received no supervision during the incident involving Jill Brown, Tr. 603-604, and no instructions during the pursuit. Tr. 609.

10) *Burns' misapplication of the arm-bar take down technique* – Jill Brown's description of Burns' use of force – *i.e.*, that she was grabbed by the arm, spun around, and thrown hard to the pavement, Tr. 52-55 – certainly belies

the notion that Burns used any legitimate "technique" for taking a citizen to the ground. Nevertheless, even assuming Burns was attempting such a "technique," plaintiff's law enforcement expert testified that Jill Brown's description of Burns' conduct did not reflect an appropriate execution of the arm-bar technique. Tr. 392, 541. Moreover, there was no need to use *any* force against Jill Brown. Tr. 347-348.

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Finally, perhaps the strongest indication that Burns was inadequately trained is that, despite the compelling case of inadequate training (and supervision) detailed above, Bryan County was unable to produce even one person who could testify that someone – *anyone* – so much as discussed with Stacy Burns specifically when or how to apply force to a citizen.[11] In sum, there was abundant evidence that, due to grossly inadequate training, Officer Burns was an officer lacking specific tools to handle the recurring constitutional obligations regarding the use of force against citizens that law enforcement officers regularly face.

D. The evidence was legally sufficient to establish a direct causal link between the County's deliberately indifferent training failures and Burns' use of excessive force against Jill Brown.

When a municipality exhibits deliberate indifference by failing to train a police officer to handle those recurring situations presenting an obvious potential for the violation of a particular constitutional right, and that officer subsequently deprives a citizen of precisely that constitutional right, a jury clearly has sufficient evidence

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[11] Burns' grandfather vaguely testified that he taught Burns how to place a suspect in the officer's custody and control, but went on to explain that he meant how to "watch people," Tr. 690, which in no way addresses how and when an officer should apply force to a citizen.

on which to base a finding that the municipality's deliberately indifferent training failure directly caused (or was the "moving force" behind) the constitutional injury. *Bryan County*, 520 U.S. at 409-410. In the present case, the constitutional injury was a deprivation of Jill Brown's right to be free from excessive force, a right that *Canton* expressly noted constitutes one of those recurring constitutional obligations that police officers regularly face, but nevertheless one that Officer Burns, due to the training failures of Bryan County, was utterly unprepared to meet. This Court's earlier opinion in this litigation expressly recognizes that the requisite causal link between a municipality's deliberately indifferent training inadequacies and the constitutional deprivation suffered by a citizen may be readily inferred in a situation such as that posed by the present case:

> in a narrow range of circumstances, a violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations. The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights could justify a finding that policymakers' decision not to train the officer reflected "deliberate indifference" to the obvious consequence of the policymakers' choice – namely, a violation of a specific constitutional or statutory right. *The high degree of predictability may also support an inference of causation – that the municipality's indifference led directly to the very consequence that was so predictable.*

520 U.S. at 409-410.[12]

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[12] The interrelationship between "deliberate indifference" and "causation" is not surprising, since this Court has defined deliberate indifference narrowly so as to virtually assure a sufficient causal link between the municipality's inadequacies and its officer's unconstitutional conduct. *See Canton*, 489 U.S. at 385-386, 388-389.

Indeed, the present case is a classic example of one that fits within the "narrow range of circumstances" that both *Canton* and *Bryan County* held open to municipal liability. This case involves an utter failure to train an officer (one particularly in need of training not only because of his rookie status but also because of what the policymaker knew about his character and his lack of respect for the law) to handle a recurring obligation that police officers regularly face (indeed, *Canton*'s precise example of a recurring obligation) – *i.e.*, the obligation to avoid using excessive force against a citizen. The failure of the County policymaker (Sheriff Moore) to require his nephew (Burns) to undergo any meaningful force-related training – *e.g.*, when to use force against a citizen, when to take them to the ground, and how to apply force so as to avoid serious injury – and the continuing failure of Bryan County to require such training despite knowledge that Burns was taking an inordinate percentage of citizens to the ground, created such a high degree of predictability that a particular constitutional deprivation would occur (namely, a deprivation of the Fourth Amendment right to be free from excessive force) as to constitute municipal deliberate indifference. And, with respect to causation, to use this Court's own words, "[t]he high degree of predictability may also support an inference of causation – that the municipality's indifference led directly to the very consequence that was so predictable." *Bryan County*, 520 U.S. at 409-410.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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